



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R10-OAR-2015-0855; FRL-9946-00-Region 10]

#### **Approval and Promulgation of Implementation Plans; Idaho: Interstate Transport Requirements for the 2010 Nitrogen Dioxide National Ambient Air Quality Standards**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a submittal by the Idaho Department of Environmental Quality (Idaho DEQ) demonstrating that the State Implementation Plan (SIP) meets certain interstate transport requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for nitrogen dioxide (NO<sub>2</sub>) on January 22, 2010. Specifically, the Idaho DEQ reviewed monitoring and modeling data to show that sources within Idaho do not significantly contribute to nonattainment, or interfere with maintenance, of the NO<sub>2</sub> NAAQS in any other state.

**DATES:** This action is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R10-OAR-2015-0855. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and is

publicly available only in hard copy form. Publicly available docket materials are available at <http://www.regulations.gov> or at EPA Region 10, Office of Air, Waste and Toxics, 1200 Sixth Avenue, Seattle, Washington 98101. The EPA requests that you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information please contact John Chi at (206) 553-1185, or [chi.john@epa.gov](mailto:chi.john@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" is used, it is intended to refer to the EPA.

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### **I. Background**

In a notice of proposed rulemaking published on February 12, 2016 (81 FR 7489), the EPA proposed to find that the Idaho SIP adequately addressed the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 NO<sub>2</sub> NAAQS. Please see our February 12, 2016, proposed rulemaking for further explanation and the basis for our finding. The public comment period for the proposed rule ended on March 14, 2016, and we received one comment.

### **II. Response to Comment**

Comment: The commenter stated that the implementation of this law is crucial in Idaho because of the pollution coming from farming communities and cities and suggested lowering

the allowed NO<sub>2</sub> standard because of the small population of people that live in Idaho, when compared to Utah. The commenter proposed that the amount of pollution produced by each person should be made a standard and that companies should be held accountable for the pollution they produce. Although the commenter supports approval, the commenter believes that the law should have stricter requirements.

Response: Under section 110 of the CAA, states are responsible for developing provisions to address air pollution for incorporation into the SIP. The EPA's role is to evaluate these state choices to determine if the revisions meet the requirements of the CAA. The EPA must approve state submissions so long as they meet the minimum requirements established by the CAA. Union Electric Co. v. EPA, 427 U.S. 246 (1976). In this case, the state's submission included provisions selected by Idaho for inclusion in its SIP to meet the CAA section 110(a)(2)(D)(i)(I) interstate transport requirements for the 2010 NO<sub>2</sub> NAAQS. The commenter does not suggest that the state's submission does not meet the applicable requirements. We have determined that the state's submission met those requirements, and thus we are approving the SIP. States have authority to adopt or enforce standards or requirements for the control or abatement of air pollution (except as specifically limited by the CAA) under section 116 of the CAA, so we provided a copy of the comment to Idaho Department of Environmental Quality for consideration during future state rulemaking, but we are otherwise taking no further action in response to the comment.

### **III. Final Action**

The EPA finds that the Idaho SIP meets the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2010 NO<sub>2</sub> NAAQS. This action is being taken under section 110 of the CAA.

#### **IV. Statutory and Executive Orders Review**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and it will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [**insert date 60 days after date of publication in the Federal Register**]. Filing a petition for reconsideration

by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Dated: April 25, 2016.

Dennis J. McLerran,  
Regional Administrator,  
Region 10.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

## **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### **Subpart N - Idaho**

2. In §52.670, the table in paragraph (e) is amended by adding an entry at the end of the table for “Interstate Transport Requirements for the 2010 NO<sub>2</sub> NAAQS” to read as follows:

#### **§52.670 Identification of plan.**

\* \* \* \* \*

(e) \* \* \*

### **EPA-APPROVED IDAHO NONREGULATORY PROVISIONS AND QUASI- REGULATORY MEASURES**

Name of SIP provision	Applicable geographic or non-attainment area	State submittal date	EPA approval date	Comments
* * * * *				
Interstate Transport Requirements for the 2010 NO <sub>2</sub> NAAQS	State-wide	12/24/2015	<b>[Insert date of publication in the Federal Register] [Insert Federal Register citation]</b>	This action addresses the following CAA elements: 110(a)(2)(D)(i) (I).

\* \* \* \* \*

[FR Doc. 2016-10452 Filed: 5/4/2016 8:45 am; Publication Date: 5/5/2016]